

1 investment?

2       A.     Because I knew from firsthand -- I had  
3 firsthand knowledge of what the going price was for  
4 existing radio stations, and my view was that, if you  
5 built a radio station, if you had the license and  
6 built the station from ground up, that in that market,  
7 with a very large margin for error, at worst you would  
8 be able to sell it for a tiny profit. And you could  
9 make a bundle of money off it because you were --  
10 existing radio stations, I'm sure, in the El Rio area,  
11 are probably selling for more than a million dollars,  
12 and here you have an opportunity with putting all your  
13 costs in to basically start a radio station and get it  
14 on the air in the range of anywhere from \$100 to  
15 \$300,000. And you don't have to be a genius to see  
16 the markup.

17             And what's happening, of course, is it's the  
18 government's fault. The government is giving these  
19 radio stations away, and they shouldn't be.

20       Q.     You spoke of earlier the El Rio market, but  
21 going back again, did you do any investigation of the  
22 radio station business in the El Rio market?

23       A.     No, not in the El Rio market, but I knew that  
24 the El Rio market was a better market than the market  
25 I was looking at, for example, in Texas.

1 Q. How do you know that?

2 A. Because I knew the demographics of the area  
3 and that the area that I was looking at in Texas -- I  
4 think it was Harlingen or something, some really  
5 godforsaken place in Texas. I mean the Oxnard/Ventura  
6 area was just night and day above it.

7 Q. And we are speaking of back in 1991?

8 A. Right.

9 Q. Back in 1991, what were the demographics of  
10 the El Rio market?

11 A. I don't know what the demographics were. All  
12 I said is I know that they were better than this area  
13 in Texas that I was looking at, which was a  
14 godforsaken place.

15 Q. Forgive me for asking this, but how did you  
16 know that?

17 A. Did I know what?

18 Q. That they were better?

19 A. I had been there. I had been to both  
20 places. I had been to the place in Texas, not in  
21 connection with looking at the radio station but many  
22 years before, and I had driven through the Oxnard  
23 area, and you can see, you know, it's a very nice  
24 area.

25 And, you know, I had asked Loren whether the

1 station did appear to reach Oxnard, and I believe she  
2 said that it did.

3 Q. Did you provide Ms. Selznick, at the time we  
4 were speaking of, back prior to December, 1991, with  
5 any written indication of your willingness to provide  
6 the funds for the El Rio station?

7 A. No. She didn't ask for it, and I didn't  
8 provide it to her. In fact, I did ask whether a  
9 commitment letter was necessary, I believe, and she  
10 said it was not. She told me that I would have to  
11 provide a balance sheet, that she didn't need it right  
12 then, but I would have to provide it. It was then we  
13 had -- it was in this part of the conversation where  
14 we then, in connection with her question whether my  
15 assets were liquid, that we went over my balance  
16 sheet. Because I asked her, I said, "Well, what does  
17 the commission mean by liquid assets?" because I had  
18 known that there were a whole number of different  
19 definitions of liquid assets.

20 Q. What did she tell you?

21 A. I'm not so sure that she knew at that point  
22 what they were.

23 And I had said, "Listen, let's go over my  
24 balance sheet. I've got it right here." And I  
25 brought it up in the computer screen, and we went over

1 item by item what would be considered and what would  
2 not be considered and, obviously, the cash would be  
3 considered liquid. And then there were the amounts  
4 owed to me by Breed, Abbott & Morgan, and since those  
5 were due to be paid in a relatively short period of  
6 time, I said, "I believe those certainly would qualify  
7 as liquid."

8 And, you know, between the cash and the  
9 amount that was owed by the partnership, we were well  
10 over the amount. I mean, we were at -- we were well  
11 over \$500,000, which was far in excess. We stopped  
12 there. We didn't get into the question of whether my,  
13 you know, equity in my house would be considered  
14 liquid or not.

15 Q. Did, at the time of this conversation, she  
16 bring up your financial statement on her computer?

17 A. She didn't have it on her computer, to my  
18 knowledge; it was on my computer.

19 Q. Did this conversation take place with you in  
20 California and her in New York?

21 A. Yes.

22 Q. And when did you provide her your financial  
23 statement?

24 A. It was relatively recently. I believe it was  
25 in August of 1993, around the date of the second

1 financial statement here, August 27, 1993. That was  
2 the first time she said she needed it, because when we  
3 first discussed it, she said that -- I may have asked  
4 her if I should send her a copy of it. Or I'm not  
5 sure exactly what I said, but I know I remember very  
6 clearly her saying, "I don't need it now but I will."

7 And I said, "Well, you let me know when you  
8 need it."

9 Q. So approximately during the time of that  
10 August 27 marked Exhibit No. 1 financial statement,  
11 that was when you provided the statements to her?

12 A. Yes.

13 Q. Exhibit No. 1 and Exhibit No. 2?

14 A. That's correct.

15 Q. Fine. Did she ask you for anything else in  
16 writing prior to December, 1991? Let's strike that  
17 question.

18 Did she ask you for anything in writing prior  
19 to December, 1991?

20 A. She didn't ask me for anything in writing in  
21 December, 1991, and she didn't ask me for anything in  
22 writing prior to that time.

23 Q. Did she ask you for anything else in writing  
24 after December, 1991?

25 A. Again, you keep saying "else." She never

1 asked me for anything in writing. The only reason I'm  
2 saying that is there seems to be some implication that  
3 she did ask me for something in writing. The first  
4 time she ever asked for a writing was, in the form of  
5 a financial statement, was around August, 1993,  
6 although I had told her in 1991 that I would give her  
7 what she needed.

8 And now, as we're sitting here, I do recall  
9 specifically asking her in the conversation we talked  
10 about my balance sheet whether she needed a commitment  
11 letter, and she told me that she did not.

12 Q. What do you mean by "a commitment letter"?

13 A. I'm using the term that bankers use. It's a  
14 formal written commitment by a bank to lend funds, and  
15 it's frequently used in deals and transactions where  
16 you get a commitment letter from the bank, and based  
17 on that commitment letter, you go out and do a deal.

18 And I asked her whether a commitment letter  
19 was necessary, and this was in 1991, and she said it  
20 was not. It was in the same conversation where she  
21 told me that she didn't need my financial statement.

22 Q. I understand. Let's take a short break. Is  
23 that okay?

24 A. Yes, absolutely.

25 (Recess from 11:35 to 11:45 a.m.)

1 BY MR. DANIELS:

2 Q. So after December, 1991, other than the  
3 financial statements, Exhibit 1, and Exhibit 2 that  
4 you provided to her, did she ask for any other  
5 writings?

6 A. What kinds of writings? As I told you, we  
7 did exchange drafts of this agreement with Clanton,  
8 and we did exchange over the modem the spreadsheet  
9 that I told you about where she was doing a financial  
10 projection of the business.

11 Q. But you did say that you felt that had  
12 nothing to do with the loan related to this  
13 application.

14 A. You didn't qualify it by "the loan." You  
15 said did she ask for any other writings.

16 Q. Correct.

17 A. Relating to the loan, no. She never asked  
18 for any writings relating to the loan until August,  
19 1993, and she specifically said that they weren't  
20 required because I indicated I would be prepared to  
21 provide them if they were.

22 Q. So did you orally express a willingness to  
23 lend Ms. Selznick the money for the El Rio station?

24 A. No, I didn't express an interest; I told her  
25 that I would.

1           Q.     Before December, 1991, do you remember which  
2 conversation you did this in and what it is that you  
3 said?

4           A.     We just went over that. I'll recapitulate it  
5 for you. At some point in 1991, in November, 1991,  
6 and I date it all by the receipt of this check from my  
7 former law firm, which has nothing to do with this  
8 specifically except that I remember very clearly  
9 waiting for it, having received it, and then Loren and  
10 I going over my balance sheet, and that's how I'm able  
11 to date the conversations. Those were about the third  
12 week in November.

13                     Before that there was -- and it may have been  
14 a week or two before that -- she told me that she was  
15 getting concerned that Derrick Cephas and his group  
16 would not give her the commitment that she needed to  
17 file her application. It was at that point that I  
18 volunteered, and I said that, "Hey, I'll be glad to do  
19 it. I think it's a great deal."

20                     And following that, we had another  
21 conversation -- it was very shortly thereafter --  
22 where she became back and basically asked me to  
23 confirm what I had previously said. She said, "Are  
24 you really sure you want to do this?"

25                     And I said, "Absolutely." I said, "This is a



1 very good deal." And I again reviewed what I saw as  
2 the economics of the transaction -- that you had an  
3 opportunity to get in on the ground floor and that  
4 your basic security was knowing that the market was  
5 pricing these stations substantially higher than their  
6 cost, and it made sense. And I confirmed that.

7 Q. And during those two conversations you've  
8 just spoken of, did you discuss any of the terms?

9 A. No, we never -- we never discussed the  
10 terms. I told her that I would provide the financing.

11 Q. How much was requested?

12 A. Well, at that point she had said \$350,000,  
13 \$360,000, one of those two. My recollection is  
14 \$350,000. She asked me at some point to sign a  
15 declaration in which she said it was 360,000, but it  
16 was in that range, but I'm not sure. That was the  
17 number we were talking about. But she had previously  
18 told me what the cost was to do this, but at this  
19 point we had not talked about the financing from me.  
20 She was talking about getting financing from Derrick  
21 Cephas and his group.

22 And as I said, it's possible, although I'm  
23 not sure, because this would have been in October,  
24 1991. I know I was in New York several times because  
25 we had just gotten a major decision in litigation, and

1 debt and probably precluded the acquisition of further  
2 debts --

3 Q. Let's go back --

4 A. -- or they could have been very healthy and  
5 very strong and would have been a means for financing  
6 any additional ventures; so it really depends on the  
7 circumstances.

8 Q. Let's go back to December, 1991. So at  
9 that --

10 A. It's November, 1991, I believe I testified.

11 Q. Okay. So with regard to November, 1991, when  
12 you had the two conversations we have been speaking of  
13 with regard to the willingness or commitment, as you  
14 said, to loan the money regarding the station, at that  
15 time was that a firm intention to make a loan, future  
16 conditions permitting?

17 A. I'm not sure what you mean by "future  
18 conditions permitting." I gave an unconditional  
19 commitment to finance the money and to lend her the  
20 money, and there was no discussion of future  
21 conditions.

22 Q. And at this time, do you have a firm  
23 intention to make the loan, future conditions  
24 permitting?

25 A. Again, I don't know what you mean by "future

1       A.    I told -- it was in the -- sometime around  
2 the third week of November, 1991, that I told her that  
3 I would provide the financing, and I guess a lawyer  
4 might describe that as reasonable assurance. I didn't  
5 say, "I will give you reasonable assurance." I said,  
6 "I'll give you the financing."

7       Q.    Prior to signing this document, did you do  
8 any research into the FCC definition of the term  
9 "reasonable assurance"?

10       A.    I'm trying to remember when I read the  
11 instructions to the FCC application that Loren faxed  
12 to me. I believe it was before this; so if that would  
13 consist of research -- I do remember reading the  
14 instructions that she faxed me and agreeing with her  
15 that her earlier interpretation regarding the need for  
16 a writing and a letter of commitment was accurate.

17       Q.    But was that --

18       A.    And that was the extent of whatever research  
19 I did.

20       Q.    Was that research done with regard to any FCC  
21 definition of the term "reasonable assurance"?

22       A.    I'm telling you exactly what I did. You can  
23 characterize it any way you want. I looked at the  
24 instructions on the FCC form, and I noted that there  
25 seemed to be different requirements for financing from

1           Q.     Okay. In the next sentence it says:  
2     "Annexed to this declaration as Exhibit A is my  
3     personal financial statement as of November 30, 1991  
4     with which Ms. Selznick was familiar."

5           A.     Yes.

6           Q.     How do you know Ms. Selznick was familiar  
7     with the November 30, 1991, financial statement?

8           A.     Because when she called me to confirm that I  
9     would provide the financing, she at that time or  
10    possibly in another conversation -- I'm not sure. If  
11    it was, it was right after that -- she raised the  
12    question of liquid assets. And I told you it was at  
13    that point that I brought my financial statement up on  
14    the computer, and I said, "I don't know what liquid  
15    assets are, but let's go over it."

16                   And we went down line by line. I told her  
17    that the only significant debt I had was the mortgage  
18    on my house. And we then went down the assets on my  
19    balance sheet to see which ones would qualify as  
20    liquid or nonliquid; so that's why ergo -- because we  
21    had discussed this.

22                   We had discussed this prior to the time she  
23    gave me this declaration because, you know, I said, "I  
24    remember, Loren, you told me that you did not need my  
25    balance sheet at that time but you would in the

1           Q.     Were there any other terms mentioned at that  
2 time?

3           A.     At or about this time, she did raise -- she  
4 said that the other side, referring to Clanton's  
5 lawyers, had raised the question of whether or not it  
6 was a legally enforceable promise because there were  
7 no specific terms and conditions.

8                     And I said, "As far as I'm concerned, that's  
9 a lot of baloney. Implicit is in this is that they  
10 are reasonably commercial terms for a loan of this  
11 nature of exactly the type that I, when I had gone out  
12 to get financing -- you go to the banks, they are all  
13 the same for the financing of a business." And I  
14 said, "Those are the implicit terms. And you're  
15 roughly talking about 4 to 5 percent above prime.  
16 You're talking about a security interest in the hard  
17 assets. You're probably talking about some form of  
18 five-year note and probably a personal guarantee."

19                    And whatever the terms are -- I mean, I was,  
20 you know -- this in one sense was a favor, but  
21 obviously for my wife and my family, you know, it  
22 would be a standard loan. I mean, that was always the  
23 position. Whatever she could get from the bank, if a  
24 bank was willing, those were the terms.

25           Q.     When did you communicate these terms to

1 the amount of bank loans, and the amount of mortgage  
2 -- no, excuse me, the mortgage does not. The  
3 mortgage debt I took off my bank form. This is 975,  
4 and here I see as of 1993 it's 950, and I can see with  
5 the zeros in there that that's not tied in. I have to  
6 work on that. That should be tied into something. It  
7 should be an exact number.

8 Q. Was there a formal appraisal made of your  
9 home?

10 A. Yes, in 1992.

11 Q. When was your home purchased?

12 A. January, 1991.

13 Q. At what price?

14 A. 1.3 million dollars.

15 Q. What is your approximate monthly mortgage on  
16 your home?

17 A. \$6,000.

18 Q. Do you have a fixed or a variable interest  
19 rate?

20 A. Variable.

21 Q. For how many years?

22 A. Thirty.

23 Q. Have you refinanced your home recently?

24 A. I've been following the mortgage market every  
25 day, and I think it's finally turned, and I'm going to



APPENDIX B

SWORN STATEMENT OF LOREN SELZNICK

1. My name is Loren F. Selznick and I am an applicant for a new FM radio station at El Rio, CA. in FCC Docket No. 93-87. I am familiar with a motion for summary decision/denial of application filed by Raymond Clanton on December 23, 1993.

2. Clanton asserts inter alia that my application's committed financial source in 1991, Mr. Joseph P. Dailey, failed to reach an understanding with me about the "terms" of his proposed loan prior to the time that my application was filed with the FCC. Although Mr. Dailey and I did not expressly discuss at that time the terms of his proposed loan for my FM application, I understood then and I continue to understand that any loan from Mr. Dailey, in fairness to both of us, would be under reasonable commercial terms for a loan of this nature, i.e., a loan for a small start-up company. To me, such a loan would bear interest at several points above prime, would be secured by the station's hard assets, would be personally guaranteed by me and would have a term of about 60 months. If commercial lending conditions for projects such as my FM station should change, however, I would expect the terms of any loan from Mr. Dailey to change accordingly. In short, Mr. Dailey's loan would be on terms that are not materially better or worse than I would receive from a lending institution.

3. Clanton also questions whether I understood the term "net liquid assets" before I signed my FM application. He refers



to a statement made by Mr. Dailey during his deposition about my understanding with respect to the term "net liquid assets."

Sometime before signing my FM application, I formed an opinion as to what the FCC meant by that term and reached a conclusion that Mr. Dailey had sufficient "net liquid assets" to meet my projected costs. During the period November-December 1991, I had numerous discussions about the FM project with Mr. Dailey. As friends and professional colleagues, we spoke then and now on almost a daily basis. Initially, there was some question in my mind regarding the FCC's definition of the term "net liquid assets." Prior to filing my application, I reviewed and understood the FCC Form 301 Instructions, which defined "net liquid assets" as "current assets minus current liabilities." That remains my understanding today.

Under penalty of perjury, I affirm that the foregoing is true and complete to the best of my information and belief.

Executed January 6, 1994.

A handwritten signature in cursive script, reading "Loren F. Selznick", written over a horizontal line.

LOREN F. SELZNICK

C

**FEDERAL COMMUNICATIONS COMMISSION**

Washington, D.C.

In re Applications of	)	MM DOCKET NO. 93-87
	)	
RAYMOND W. CLANTON	)	File No. BPH-911216MC
	)	
LOREN F. SELZNICK	)	File No. BPH-911216MD
	)	
	)	
For Construction Permit for a	)	
New FM Station on channel 279A	)	
in El Rio, California	)	

To: Honorable John M. Frysiak  
Administrative Law Judge

## DECLARATION

1. My name is Joseph P. Dailey and I reside at 565 Peralta Hills Drive, Anaheim, California 92807. I make this declaration in support of the amendment to the application of Loren F. Selznick for a new FM station in El Rio, California concerning financial qualifications.

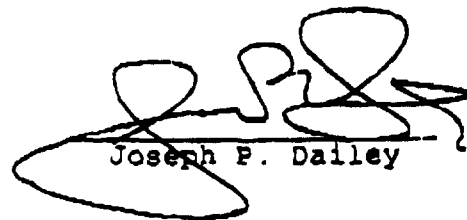
2. At the time Ms Selznick applied for the construction permit in December 1991, I gave her reasonable assurance that I would provide the funds necessary to construct the station and operate it for three months without revenue. At the time, we contemplated that the total cost would be \$360,070. Annexed to this declaration as Exhibit A is my personal financial statement as of November 30, 1991 with which Ms Selznick was familiar. Also annexed as Exhibit B is my personal financial statement as of August 27, 1993. I was and continue to be able to provide the funds originally contemplated.

3. In late July, 1993, Ms Selznick and I had a telephone conversation in which Ms Selznick told me that she had spoken with several brokers and consultants. She reported to me that she was advised that a much more streamlined approach to both construction and operations would be advisable for a start-up radio station. Specifically, Ms Selznick informed me that she was advised that the funds necessary would be less than \$110,000. With the substantially lower amount in mind, Ms Selznick also advised me that she thought she would be able to provide almost all of the funding herself. We agreed that Ms Selznick would provide as much of the funding as she could and that I would make up the difference with a loan of up to \$40,000.

4. If my funding is required, I am willing to provide a loan of up to \$40,000 for a term of 5 years at an interest rate of 12% with payments to commence one year after completion of construction of the radio station.

I swear under penalty of perjury that the foregoing is true and complete.

August 27, 1993



Joseph P. Dailey

**Social Security..... 179-84-8445**

**Address..... 565 Peralta Hills Drive**  
**Anaheim, California 92807**

**Telephone..... (714) 282-1170 (Home)**  
**(714) 640-5426 (Office)**

**Occupations..... Attorney**  
**President**  
**RunTime Technologies, L.P.**  
**610 Newport Center Drive, Suite 600**  
**Newport Beach, California 92660**

Peralta Hills Home (Appraised Value).....	\$1,600,000
Cash .....	\$218,000
Partnership Profits .....	\$230,864
Salary Receivable.....	\$50,000
Partnership Inventory Interest .....	\$150,368
RunTime Technologies Investment At Cost.....	\$420,000
Personal Property.....	\$250,000
Automobiles.....	<u>\$20,000</u>
<b>Total.....</b>	<b>\$2,939,232</b>

Mortgage Debt.....	\$975,000
Bank Loans.....	\$44,970
Notes Payable.....	\$0
Income Taxes Payable.....	\$0
Charge Accounts Payable.....	\$0
<b>Total.....</b>	<b>\$1,019,970</b>

**Net Worth..... \$1,919,262**

**Social Security..... 179-84-8445**

**Address..... 565 Peralta Hills Drive**  
**Anaheim, California 92807**

**Telephone..... (714) 282-1170 (Home)**  
**(714) 640-5426 (Office)**

**Occupations..... Attorney**  
**President**  
**RunTime Technologies, L.P.**  
**610 Newport Center Drive, Suite 600**  
**Newport Beach, California 92660**

Peralta Hills Home (Appraised Value).....	\$1,600,000
Cash .....	\$42,800
Partnership Profits.....	\$124,627
Salary Receivable.....	\$216,667
Notes Receivable.....	\$30,000
Partnership Inventory Interest.....	\$90,220
RunTime Technologies Investment At Cost.....	\$780,000
Personal Property.....	\$250,000
Automobiles.....	<u>\$10,000</u>
<b>Total.....</b>	<b>\$3,144,314</b>

Mortgage Debt.....	\$950,000
Bank Loans.....	\$68,921
Notes Payable.....	\$0
Income Taxes Payable.....	\$0
Charge Accounts Payable.....	\$0
<b>Total.....</b>	<b>\$1,018,921</b>

**Net Worth..... \$2,125,392**

CERTIFICATE OF SERVICE

I, Karen D. Anderson, do certify that a copy of the foregoing "Opposition of Selznick and Countermotion for Summary Decision" was served by hand on this 6th day of January, 1994, on the following:

Honorable John M. Frysiak  
Room 223  
Federal Communications Commission  
2000 L Street, NW  
Washington, DC 20036

Paulette Laden, Esq.  
Hearing Branch -- Room 7212  
Federal Communications Commission  
2025 M Street, NW  
Washington, DC 20054

Jerrold D. Miller, Esq.  
Miller & Miller, P.C.  
1990 M Street, NW  
Suite 760  
Washington, DC 20036

  
\_\_\_\_\_  
Karen D. Anderson